IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.125 OF 2005
IN
EXECUTION APPLICATION NO.277 OF 2003
IN
SUMMARY SUIT NO.1074 OF 1991

M/s.Rajendra Electrical Industries ....Plaintiff
V/s.
M/s.Radiant Engineering & Mfg.Works ....Defendants
And
M/s.Radant Associates ....Applicants

Mr.R.C. Dhuru for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 9TH JANUARY, 2006.

P.C. :

1. The Chamber Summons is taken out to set aside the attachment levied in respect of the premises admeasuring 535 sq.ft. situated at Commerce Center, Tardeo, Mumbai. The premises have been allotted number 12A-C. The reliefs are also sought in respect of the moveable property lying therein.

2. It appears that the attachment was pursuant to the decree obtained by the Plaintiff against the Defendants and the orders passed in the application under order 21 of the Code of Civil Procedure. The only question is whether the Defendants had any

subsisting right which is liable to be attached in execution of the decree. The premises form part of larger area tenanted by the landlord one Nana Chudasma in favour of ESSO. On nationalisation, ESSO is now Hindustan Petroleum Company Limited (H.P.C.L.). H.P.C.L. in turn created a sub-tenancy in favour of one M/s.R.D. Gandhi & Co. M/s.R.D. Gandhi & Co. in turn had granted on temporary basis the said cabin/premises to the Defendant. However, the Defendant was unable to carry on any business. Therefore even prior to the filing of the suit the Defendant stopped carrying on business from the said premises except for the purpose of correspondence. This the Applicants permitted the Defendant to do purportedly in view of their co-ordial relations.

3. On 1st January, 1991, the Applicant firm was constituted. On 1st January, 1991 M/s.R.D. Gandhi & Co. in turn permitted the Applicant to use the said premises on monthly compensation of Rs.90/-. This is evidenced by a certificate dated 1st January, 1991. It is further recorded that M/s.R.D. Gandhi & Co. had no objection to the Applicants starting their business therein.

4. Mr.Dhuru, the learned counsel appearing on

behalf of the Defendants states that none of the partners of the Defendants are the partners of the Applicants and vice-versa.

5. On the basis of the record produced by the Plaintiff, it appears that the Applicants have been in possession of the said premises since 1st January, 1991 and have been conducting business from the same. There is nothing on record that suggests that Defendant No.1 had any subsisting rights in respect of the said premises prior to the filing of the suit. In any event, no affidavit in reply has been filed despite the Plaintiff's having been served.

6. The Chamber Summons is made absolute in terms of prayers (a) and (b). The Plaintiff shall pay the costs of this Chamber Summons to the Defendants fixed at Rs.2500/- within eight weeks from today.

7. This order is without prejudice to the pending interlocutory proceedings and orders, if any, therein.